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1 **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

2 **STATE OF NEW MEXICO,**

3 Plaintiff-Appellee,

4 **v.**

No. 35,189

5 **BRANDT THROWER,**

6 Defendant-Appellant.

7 **APPEAL FROM THE DISTRICT COURT OF SAN JUAN COUNTY**

8 **Dalene Marsh, District Judge**

9 Hector H. Balderas, Attorney General

10 Santa Fe, NM

11 M. Anne Kelly, Assistant Attorney General

12 Albuquerque, NM

13 for Appellee

14 Tyson Quail

15 Farmington, NM

16 for Appellant

17 **MEMORANDUM OPINION**

18 **BUSTAMANTE, Judge.**

1 {1} Having entered a conditional plea in magistrate court, Defendant Brandt
2 Thrower appealed to the district court for review of the denial of his motion to
3 dismiss. The district court also denied Defendant's motion to dismiss, [RP 30] and
4 this appeal followed. Summary reversal was proposed for the reasons stated in the
5 notice of proposed disposition filed on April 15, 2016. On May 16, 2016, the State
6 filed a response to our proposed disposition noting its intention not to file a
7 memorandum in opposition. Accordingly, we reverse the district court's denial of
8 Defendant's motion to dismiss for the reasons stated in this Court's notice of proposed
9 disposition. In addition, consistent with the procedures set forth in *State v. Celusniak*,
10 2004-NMCA-070, ¶¶ 8-15, 135 N.M. 728, 93 P.3d 10, we remand to the district court
11 so that it may issue an order of remand to the magistrate court permitting Defendant
12 to withdraw his conditional plea.

13 {2} **IT IS SO ORDERED.**

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MICHAEL D. BUSTAMANTE, Judge

17 **WE CONCUR:**

18

MICHAEL E. VIGIL, Chief Judge

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2 **TIMOTHY L. GARCIA, Judge**